

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

LANDWORKS CREATIONS, LLC,

Plaintiff

v.

UNITED STATES FIDELITY AND  
GUARANTY COMPANY,

Defendant

C.A. No.

**05-40072 FDS**

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1446(a), and Local Rule 81.1, the defendant, United States Fidelity & Guaranty Company ("USF&G"), hereby files and submits its Notice of Removal. In support of this Notice, USF&G states as follows:

The plaintiff, Landworks Creations, LLC ("Landworks"), commenced this lawsuit against USF&G in the Massachusetts Superior Court (Worcester County) on April 11, 2005. (A true and accurate copy of the Complaint as served upon USF&G is attached as Exhibit A.)

USF&G is a Maryland Corporation and Landworks is a Limited Liability Corporation with its principal place of business in the State of New Hampshire. Plaintiff Landworks seeks to recover One Hundred Thirty Five Thousand One Hundred One Dollars (\$135,101.00) in damages and therefore, the amount in controversy exceeds \$75,000, exclusive of interest and costs. In these circumstances, this Court has jurisdiction over this matter pursuant to 28 U.S.C. §1332(a), and USF&G is entitled to remove the action to this Court pursuant to 28 U.S.C. §1446(a).

Accordingly, USF&G hereby files and submits its Notice of Removal.

Respectfully submitted,

**FILING FEE PAID:**

RECEIPT # 404564  
AMOUNT # 250.00  
BY STAFF  
DATE 5-12-05

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COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
CIVIL ACTION NO:

LANDWORKS CREATIONS, LLC

Plaintiff

v.

UNITED STATES FIDELITY AND  
GUARNTY COMPANY

Defendant

VERIFIED COMPLAINT

1. Plaintiff, Landworks Creations, LLC ("the Plaintiff") is a limited liability corporation with a principal place of business at 1500A Lafayette Road in Portsmouth in the State of New Hampshire.
2. Defendant, United States Fidelity & Guaranty Co./St. Paul's Ins. Co ("the Defendant") is an insurance company with a place of business at 124 Grove Street, Franklin, Norfolk County, in the Commonwealth of Massachusetts.
3. The Plaintiff entered into a contract with Standen Contracting Company, Inc. of North Dartmouth, Massachusetts.
4. The Plaintiff agreed to perform certain work for Standen Contracting Company, Inc. at the Shrewsbury Middle School ("the Project")
5. Standen Contracting Company, Inc. was bonded by the Defendant, United States Fidelity & Guaranty Co.
6. Standen Contracting Company, Inc. was unable to complete its work at the Project, and the Defendant, pursuant to its obligations under a performance bond SW5041 assumed

responsibility for completion of the Project in the stead of Standen Contracting Company, Inc.

7. The Plaintiff has performed its work under the Standen contract, and is owed funds by the Defendant for the work performed.
8. The Defendant has failed to pay the Plaintiff for work performed at the Project, to the extent of \$135,101.00.

**COUNT I  
BREACH OF CONTRACT**

9. The Plaintiff restates allegations 1-8 and incorporates them by reference.
10. The Defendant breached its contract by failing to perform its obligations to make payment under the bond between the Defendant and Standen for the benefit of the Plaintiff.
11. As a result of this breach, the Plaintiff has been denied its expectancy and has otherwise been harmed.

**COUNT II  
VIOLATION OF G.L. c. 93A and 176D**

12. The Plaintiff restates allegations 1-11 and incorporates them by reference.
13. Notwithstanding that liability was reasonably clear, the Defendant has declined to make full settlement of the claim, without cause or excuse.
14. The Plaintiff has made demand for its funds, a demand which has been ignored.
15. As a result of this conduct, the Plaintiff has been harmed in its business.

WHEREFORE, the Plaintiff respectfully requests that:

MAR 29 2005 17:01

LEAD OFFICES OF

1. this Honorable Court enter judgment against the Defendant as to all Counts;
2. this Honorable Court award the Plaintiff the amount of \$135,101 together with interest and costs, trebled, along with attorney's fees; and
3. this Honorable Court award any further relief as deemed appropriate by this Court.

**THE PLAINTIFF DEMANDS A TRIAL BY JURY**

Respectfully Submitted,  
**Landwerks Creations, LLC**  
By its attorney,

Robert N. Meltzer, BBO #564745  
PO Box 1459  
Framingham, MA 01701  
Phone: (508) 872-7116  
Telecopier (508) 872-8284

Dated: March 29, 2005

**VERIFICATION**

I, Neal Matthews, an officer of Landworks Creations, LLC and duly authorized to sign this document on behalf of the corporation, do hereby certify that I have reviewed the attached document, and that the facts contained herein stating the funds owed are true to the best of my knowledge and belief, and represent a true and accurate accounting of the funds due and owing to Landworks Creations, Inc.

Signed under the pains and penalties of perjury this 29th day of March, 2005

NEAL MATTHEWS  
Neal Matthews

JS 44 (Rev. 11/04)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Landworks Creations, LLC

(b) County of Residence of First Listed Plaintiff Rockingham, NH  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Robert N. Meltzner, Esq., PO Box 1459, Framingham, MA 01701

**DEFENDANTS**

United States Fidelity &amp; Guaranty Company

County of Residence of First Listed Defendant Baltimore City, MD  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Bradford R. Carver, Cetrulo &amp; Capone, LLP, Two Seaport Lane, Boston, MA 02210; 617-217-5500

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       |                                       |   |                            |                                       |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
|   | PTF                                   | DEF                                   |   | PTF                        | DEF                                   |
| Citizen of This State                   | <input type="checkbox"/> 1            | <input type="checkbox"/> 1            | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>PROPERTY RIGHTS</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
			<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

**V. ORIGIN**

- (Place an "X" in One Box Only)
- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

11 U.S.C. § 1446 (b)  
 Brief description of cause: Claim on Payment Bond

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** 135,101.00

CHECK YES only if demanded in complaint: Plaintiff made demand in state action  
**JURY DEMAND:** ☐ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions): JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Landworks Creations, LLC v. United States Fidelity & Guaranty Company.
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- ☐ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950. \*Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☒ III. 110, 120, 130, 140, 161, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
- YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
- YES ☐ NO ☒
- If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
- YES ☐ NO ☒
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
- YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
- YES ☐ NO ☒
- A. If yes, in which division do all of the non-governmental parties reside?
- Eastern Division ☐ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
- Eastern Division ☐ Central Division ☒ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
- YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Bradford R. CarverADDRESS Cetrullo & Capone, LLP, Two Seaport Lane, Boston, MA 02210TELEPHONE NO. 617-217-5500